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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
APPELLANT,

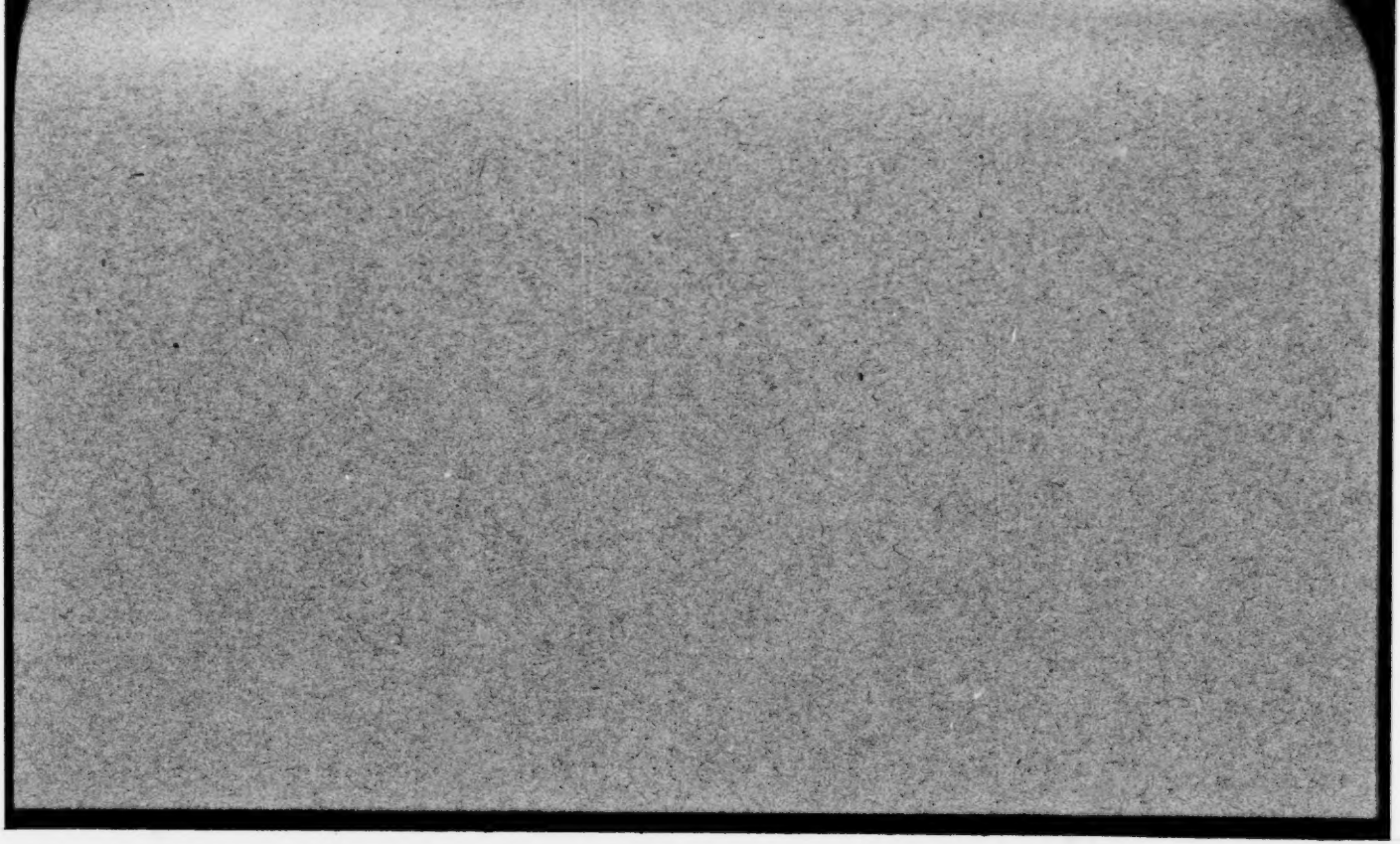
vs.

CORPORATION TAX APPEAL BOARD OF THE
STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF
MICHIGAN

FILED MAY 2, 1932

(36,722)



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IN SUPREME COURT OF MICHIGAN

35912

Parties

In the Matter of THE DETROIT INTERNATIONAL BRIDGE Company, a Corporation Organized and Existing under the Laws of the State of Michigan; Detroit International Bridge Company, Appellant

Plaintiff's attorneys: Paul W. Voorhies, Paul G. Eger.
Defendant's attorneys: Stevenson, Butzel, Eaman & Long.

Appeal from Corporation Tax Appeal Board.

DOCKET ENTRIES

Date	Proceedings
1931.	
June 24.	Application for leave to appeal filed.
" 25.	Application for leave to appeal granted.
" 26.	Application with endorsement transmitted to Board.
July 18.	Proof of service of appeal filed.
Aug. 29.	Note of argument filed.
Sept. 11.	Return filed.
Oct. 3.	Stipulation re right to do business in New York filed.
" 28.	Argued and submitted.
1932.	
Jan. 4.	Opinion filed.
Feb. 23.	Motion for rehearing submitted.
Mar. 3.	Motion for rehearing denied.
Apr. 5.	Judgment entered.
" 5.	Petition for leave to appeal to U. S. Supreme Court filed.
" 5.	Petition granted.

[fol. 1] IN SUPREME COURT OF MICHIGAN

No. —

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

FULL NOTICE OF APPEAL

1. The petitioner and appellant above named hereby appeals from the determination of the Corporation Tax Appeal Board entered in this cause on June 4th, 1931, in the computation of the 1929 annual privilege fee, whereby it is determined that the privilege fee for the year 1929 owing by the appellant to the State of Michigan is Three Thousand Dollars ($3,000.00), this determination by the Corporation Tax Appeal Board having been made upon an appeal to it from the determination of the Secretary of State. The appellant also appeals from the determination of the Corporation Tax Appeal Board entered in this cause on June 9th, 1931, in the computation of the 1930 annual privilege fee, whereby it is determined that the privilege fee for the year 1930 owing by the appellant to the State of Michigan is Two Thousand Nine Hundred Thirty-five and 95/100 Dollars ($2,935.95). Both determinations by the Tax Appeal Board are being consolidated in this one appeal since all the questions involved, with one exception, are identical.

2. Petition for leave to appeal in the nature of a petition [fol. 2] for writ of certiorari is attached hereto and made a part hereof, and is supported by a Memorandum Brief. The entire record and file before the Corporation Tax Appeal Board is to be incorporated in the record on appeal more specifically as follows:

(a) 1929 amended annual report of Detroit Internatinal Bridge Company.

(b) 1930 annual report of Detroit International Bridge Company.

(c) The determination of the Secretary of State of the 1929 privilege fee dated June 25th, 1930.

(d) The determination of the Secretary of State of the 1930 privilege fee dated June 4th, 1931.

(e) Notice of appeal of 1929 fee to the Corporation Tax Appeal Board dated June 27th, 1930.

(f) Notice of appeal of 1930 fee to the Corporation Tax Appeal Board dated June 8th, 1931.

(g) Affidavit of officers of the Detroit International Bridge Company, re nature of certain items of intangibles filed with the Secretary of State and Corporation Tax Appeal Board.

(h) Certificate and order from the Corporation Tax Appeal Board certifying to the Secretary of State its computation of the 1929 tax dated June 4th, 1931.

(i) Certificate and order from the Corporation Tax Appeal Board certifying to the Secretary of State its computation of the 1930 tax dated June 9th, 1931.

3. The appellant has copies or the originals of these documents and will require no papers from the respondents in order to make up the record on appeal.

4. Appellant prays that said order and determination of [fol. 3] the Corporation Tax Appeal Board be reversed, and that the computation of the 1929 and 1930 privilege taxes be made in accordance with the annual reports for those years as filed by the Detroit International Bridge Company.

Said Corporation Tax Appeal Board erred in its computation of the 1929 tax as a matter of law, holding that all of the intangible items allocated without the State of Michigan by the Detroit International Bridge Company were to be allocated as being within the State of Michigan for the purpose of the computation of the tax.

Said Corporation Tax Appeal Board erred in its computation of the 1930 tax as a matter of law, holding that all of the intangible items allocated without the State of Michigan by the Detroit International Bridge Company were to be allocated as being within the State of Michigan for the purpose of the computation of the tax, and in further holding that the entire bridge structure, consisting of land, buildings (bridge structure), equipment, franchises, rights, etc., were not to be excluded in the computation of the tax, although, as appellant contends, said structure and other items is property exclusively used in interstate and international commerce, and should be excluded from the com-

putation under the provisions of Act. No. 85 of the Public Acts of 1921, Section 5, as amended by Act No. 175 of the Public Acts of 1929. Said Corporation Tax Appeal Board further erred in including said bridge structure in the computation of the 1930 privilege fee, in that by so doing it illegally imposed a tax upon the doing of interstate and international commerce by the appellant in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, and denies to petitioner the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

[fol. 4] Said Corporation Tax Appeal Board further erred in holding that the Detroit International Bridge Company was subject to the 1930 privilege fee in that said Detroit International Bridge Company was organized for the sole purpose of engaging in foreign commerce; that at December 31st, 1929, and continuously thereafter it has devoted itself exclusively to the doing of foreign commerce, having no other corporate powers, so that to impose a privilege fee upon this corporation would be wrongfully imposing a tax upon the doing of foreign commerce in violation of Article 1, Section 8, Clause 3, of the Constitution of the United States.

Stevenson, Butzel, Eaman & Long, Attorneys for Appellant.

Business address: 2288 First Nat'l Bank Bldg., Detroit, Michigan.

Dated June 23, 1931.

IN SUPREME COURT OF MICHIGAN

No. —

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

PETITION FOR LEAVE TO APPEAL (IN THE NATURE OF A PETITION FOR WRIT OF CERTIORARI)—Filed June 23, 1931

To the Honorable Judges of the Supreme Court for the State of Michigan:

Your petitioner, Detroit International Bridge Company, respectfully shows unto this court as follows:

[fol. 5]

I

That your petitioner, Detroit International Bridge Company, is a corporation organized and existing under the laws of the State of Michigan, having been organized under the provisions of Act No. 84 of the Public Acts of 1921, as amended, on June 20th, 1927, with its principal office being located in the City of Detroit, Michigan.

II

Article III of the Articles of Association of the Detroit International Bridge Company, as amended, provides that—

"The purpose or purposes of this corporation are as follows:

To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto;

To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The other corporate powers are merely incidental to the primary purpose of a highway bridge company across the Detroit River from Detroit, Michigan, to Sandwich, Ontario, Canada.

The petitioner, Detroit International Bridge Company, is now and has continuously since October, 1929, itself operated the bridge for vehicular and pedestrian traffic across the Detroit River from Detroit, Michigan, to Canada, the entire structure and appurtenances thereto being used and operated by the petitioner exclusively in foreign commerce.

[fol. 6]

III

Your petitioner further shows that permission and authority for the construction of this bridge was granted by an Act of Congress of the United States of America, approved March 4th, 1921, entitled "An Act to Authorize the Construction and Maintenance of a bridge across the Detroit River Within or near the City limits of Detroit, Michigan," which act was adopted in accordance with the provisions of the Act of Congress entitled "An Act to

Regulate the Construction of Bridges over Navigable Waters" approved March 23rd, 1906. Petitioner further shows that this act was amended and the time for the completion of the construction of this bridge was extended from time to time by Acts of Congress approved April 17th, 1924, March 3rd, 1925, and May 13th, 1926, your petitioner having by purchase acquired the rights and franchises of the American Transit Company, to which company these franchises for the construction of the bridge were originally granted.

Your petitioner further shows that the Canadian Transit Company, a subsidiary of your petitioner, which owns and operates the Canadian portion of the bridge structure, was granted permission and authority to construct the bridge on the Canadian side by an Act of Parliament of the Dominion of Canada, assented to May 3rd, 1921, and amended from time to time, having finally received approval of the Governor General of Canada on March 31st, 1927.

IV

Petitioner further shows that in accordance with the provisions of Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, that it filed its annual report for 1929 with the Secretary of State for the [fol. 7] State of Michigan in due course in September of 1929, and that at a later date, namely May 22nd, 1930, in accordance with the suggestions of the Secretary of State an amended annual report for the year 1929 was filed, a copy of which is attached hereto and made a part hereof designated "Exhibit 1", with the same force and effect as though set out at full length herein, your petitioner having paid the Secretary of State at the time of filing in September the sum of $12.00, $10.00 to cover the minimum privilege fee and $2.00 to cover the filing fee.

V

Your petitioner further shows that on June 25th, 1930, after a number of conferences, the Secretary of State determined the privilege fee to be Three Thousand Dollars ($3,000.00), a copy of such letter of determination being attached hereto designated "Exhibit 2" and made a part hereof, in which determination said Secretary of State,

contrary to the proper rule of law, allocated as being within Michigan, for the purpose of computation, items of intangibles, which will be more particularly hereinafter described, which were allocated by your petitioner as being without the State of Michigan, having been used in and acquired from the conduct of its business out of the State of Michigan.

VI

On June 27th, 1930, your petitioner being aggrieved by the assessment and the determination of the said privilege fee by the Secretary of State and believing in good faith that such assessment could not be justified, appealed therefrom to the Corporation Tax Appeal Board pursuant to and in accordance with the provisions of Section 9 of Act [fol. 8] No. 85 of the Public Acts of 1921, as amended, a copy of the letter and notice of appeal to said Board being attached hereto designated "Exhibit 3" and made a part hereof with the same force and effect as though set out at full length herein.

VII

That the matter having come on for hearing before said Corporation Tax Appeal Board on August 11th, 1930, your petitioner, by its counsel, presented the facts, filed affidavits of officers of the petitioner, submitted its contentions and cited law in support thereof why the assessment and the determination of the privilege fee should be over-ruled and annulled. On June 4th, 1931, said Corporation Tax Appeal Board rendered its decision confirming the assessment and determination made by the Secretary of State requiring the petitioner to pay the privilege fee in the sum of Three Thousand Dollars ($3,000.00) for the year 1929, the certificate of determination of the Corporation Tax Appeal Board, designated "Exhibit 4", being attached hereto and made a part hereof with the same force and effect as though set out at full length herein.

VIII

Your petitioner further avers that on September 2nd, 1930, it filed with the Secretary of State for the State of Michigan its annual report containing the information from which the franchise fee of corporations is computed, show-

ing its condition at the close of business on December 31, 1929, upon forms prescribed by the Secretary of State pursuant to and in accordance with the Public Acts of 1921, as amended, a copy of said 1930 report being attached hereto designated "Exhibit 5", and made a part hereof with the same force and effect as though set out at full length herein, [fol. 9] and that at the time of the filing of the said 1930 annual report your petitioner paid unto the Secretary of State the sum of $147.92, $145.92 covering the fee as computed by your petitioner on the basis of said annual report and $2.00 to cover the filing fee.

IX

Said Secretary of State withheld a determination of the 1930 tax because all of the items in dispute, except one, were identical to those to be determined under the 1929 privilege tax by the Corporation Tax Appeal Board, but that after the determination of the said Board on the 1929 tax, said Secretary of State determined the 1930 privilege tax of your petitioner to be Twenty-nine Hundred Thirty-five and 95/100 Dollars ($2,935.95), a copy of said letter of determination being attached hereto designated "Exhibit 6" with the same force and effect as though set out at full length herein.

X

On June 8th, 1931, your petitioner being aggrieved by the assessment and the determination of the said privilege fee by the Secretary of State and believing in good faith that such assessment could not be justified appealed therefrom to the Corporation Tax Appeal Board pursuant to and in accordance with the provisions of Section 9, of Act. No. 85 of the Public Acts of 1921, as amended, a copy of the letter and notice of appeal to said Board being attached hereto designated "Exhibit 7" and made a part hereof with the same force and effect as though set out at full length herein.

XI

That the matter was brought on for hearing before said Corporation Tax Appeal Board on June 9th, 1931, the [fol. 10] previous affidavits of the petitioner as to the nature of the intangibles being accepted as filed for the 1930 computation. On June 9th, 1931, said Corporation Tax Appeal

Board rendered its decision confirming the assessment and determination made by the Secretary of State requiring the petitioner to pay the privilege fee in the sum of Twenty-nine Hundred Thirty-five and 95/100 Dollars ($2,935.95) for the year 1930, the certificate of determination of the Corporation Tax Appeal Board, designated "Exhibit 8", being attached hereto and made a part hereof with the same force and effect as though set out at full length herein.

XII

Your petitioner respectfully shows that it was aggrieved by the determination of the Secretary of State and the Corporation Tax Appeal Board and submits that said determination of the privilege fee for the years 1929 and 1930 is erroneous and illegal and without warrant and not in accord with the law and facts here controlling, in the following particulars:

(a) In allocating the item of cash, including cash on special deposit in the amount of $5,673,155.71 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report, in the computation of the 1929 privilege fee, said item of intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(b) In allocating the item of cash in the amount of $44.124.15 and cash on special deposit in the amount of $1,768,920.81, making a total of cash, including cash on special deposit, of $1,813,044.96 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report, in the computation of the 1930 privilege fee, said item of [fol. 11] intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(c) In allocating the item of investments in the amount of $1,304,630.70 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report in the computation of the 1929 privilege fee, said item of intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(d) In allocating the item of investments in the amount of $2,471,610.63 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report in the computation of the 1930 privilege fee, said item of intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(e) In allocating the item of unamortized discount and expense on funded debt in the amount of $1,234,217.19 as being within the State of Michigan in the computation of the 1929 tax, which was not used in the computation by petitioner at all, and in allocating another $1,000.00 as being within the State of Michigan under the item of unamortized discount which your petitioner allocated as being without the State of Michigan, said items of intangibles if to be used in the computation at all are referable to business done by your peititoner during the financing of the bridge company exclusively out of the State of Michigan, to wit, New York City.

(f) In allocating the item of unamortized discount and expense on funded debt in the amount of $1,053,458.98 as being within the State of Michigan in the computation of the 1930 privilege fee instead of being without the State [fol. 12] of Michigan as submitted by your petitioner in its annual report, said item of intangibles if to be used in the computation at all being referable to business done by your petitioner during the financing of the bridge company exclusively out of the State of Michigan, to wit, New York City.

(g) In including the value of the bridge structure, including lands, buildings, fixtures, equipment, franchises and rights in the amounts of $10,661,674.26 in the computation of the 1930 privilege fee, when in fact said bridge structure and all of the other foregoing items consist of property which is used exclusively in interstate and foreign commerce.

(h) In holding that the bridge company was subject to the privilege tax for 1930 at all in that it was on December 31st, 1929, and has been continuously thereafter engaged exclusively in foreign commerce.

(i) In determining the privilege fee of petitioner for the year of 1929 to be $3,000.00

(j) In determining the privilege fee of petitioner for the year of 1930 to be $2,935.95.

XIII

All of the items of intangibles in dispute in the computation of both the 1929 and 1930 taxes were either owned, used or acquired from the conduct of petitioner's business without the State of Michigan:

A

Cash, Including Cash on Special Deposit

Item 1 of the 1929 annual report being cash, including cash on special deposit in the amount of $5,673,155.71 was allocated as being without the State of Michigan by the petitioner. This item was explained in the affidavit designated "Exhibit 9", attached hereto and made a part hereof, [fol. 13] and should be summarized as follows: The principal amount of cash in item 1 is cash on special deposit held in New York City by the New York Trust Company as Trustee under the joint first mortgage of the petitioner and the Canadian Transit Company securing bonds of those companies under a $12,000,000.00 bond issue and as Trustee under a Trust Mortgage securing an $8,000,000.00 debenture issue, both bearing the date of August 1, 1927. This amount of the special deposit of the Trustee represents the balance of cash of the $20,000,000.00, the other moneys having been used to pay for the property and the portion of the bridge structure completed at December preceding the filing of the annual report. A portion of this balance with the Trustee was to be used at a later date for payment of the remaining cost of the construction of the bridge. A substantial portion of these funds during the period of construction was to be used in payment of interest due upon the mortgage bonds and debentures of the petitioner, amounting to a sum well over $1,900,000.00 during the periods here in question. Under an agreement the Trustee had exclusive control of the funds and was authorized and did over a period of two years herein question loan these moneys on call to individuals and corpora-

tions located and doing business in New York, and invested these moneys in securities permitted under the terms of the two Trust Indentures. On page 24 of the Mortgage Trust Indenture it is provided:

"That the 'deposited cash' shall be held by the Trustee as part of the property subject to the lien of this Indenture, and for the further securtiy of the holders of Bonds issued hereunder."

And further that

"part or all of the deposited cash pending its withdrawal [fol. 14] hereunder shall be invested by the Trustee in one or more of the following classes of securities or loans (1) United States government obligations maturing within three years after such investment therein; (2) interest bearing certificates of deposit of any bank and/or trust company satisfactory to the Trustee and/or of the Trustee; (3) obligations of any state of the United States of America on the North American continent maturing within three years from the date of investment of the deposited cash therein; (4) obligations of any municipality having a population of at least one million in any of such states, provided such obligations mature within three years from the date of the investment of the deposited cash therein; (5) loans maturing within twelve months from the date of making secured by pledge of readily marketable securities listed on the New York Stock Exchange, provided that the margin for such loans shall be at least as great as that then demanded by the loan department of the Trustee in respect of loans made upon similar collateral."

And further that

"All securities and loans shall, until otherwise dealt with as hereinafter provided, constitute part of the trust estate herein created for the security of the Bonds at any time outstanding hereunder."

A similiar provision appears in the Trust Agreement securing the $8,000,000.00 debentures on pages 7 and 8.

After completion of the bridge and upon the filing of satisfactory certificates of the Engineer and opinion of counsel for the banks, the Trustee had the authority to pay

[fol. 15] to the petitioner the sum of $150,000.00 only and the balance of these funds remaining to be applied by the Trustee to the payment of the bonds or gold debentures and/or as an addition to the sinking fund securing said bond and/or debenture issue. See pages 35 and 36 of the Mortgage Indenture and pages 22 and 23 of the Debenture Issue.

This item of cash, including the special deposit with the Trustee, is a part of the $20,000,000.00 raised by the petitioner under its original financing under a contract with Hemphill, Noyes & Co. and Peabody, Houghteling & Co., Inc., as bankers at New York City, all of the bonds and debentures having been sold without the State of Michigan, a greater portion having been sold in New York City, New York State.

In the 1930 item number 1, being cash in the amount of $44,124.15 and item number 11 being special deposits with the Trustee, in the amount of $1,768,920.81, allocated by the petitioner as being without the State of Michigan are identical in nature to the foregoing items hereinabove described. These funds were out of the control of the Bridge Company completely on December 31st, 1928, and December 31st, 1929, respectively, having been exclusively used and employed by the Trustee in the City of New York in New York investments and transactions.

B

Notes and Accounts Receivable

Items of Notes and Accounts Receivable in both the years 1929 and 1930 in the annual reports are sufficiently detailed in the affidavit of the officer of the petitioner filed with the Corporation Tax Appeal Board and attached hereto designated "Exhibit 9".

[fol. 16]

C

Investments

One Million Two Hundred Eighty Thousand Dollars ($1,280,000.00) of item 5 in the annual report for 1929 being investments in the amount of $1,304,630.70 and item 5 in the 1930 report being investments in the amount of $2,471,610.63 consists of the stock of the Canadian Transit

Company organized under the laws of Canada, this item being more particularly described on pages 5 and 6 of the affidavit attached hereto marked "Exhibit 9" and filed before the Corporation Tax Appeal Board. This item for the year 1930 is considerably greater than it was for the year 1929 because under the 1930 report it represented the completed structure and paid in capital of the Canadian Transit Company as of December 31st, 1929, this amount having been increased over the year preceding.

The Canadian Transit Company is a company organized under the laws of Canada, and does no business in Michigan whatsoever. The Canadian Company owns the Canadian portion of the Ambassador Bridge and the property upon which it is situated. It also owns the Franchise of Charter granted by the Dominion of Canada which could in no wise be acquired by an American Company or an American citizen, but will be granted only to a Canadian or British subject or Company. The moneys borrowed by the Canadian Transit Company were employed exclusively in constructing the Canadian portion of the Bridge. The stock of the Company was acquired by the Michigan Company, solely for the purpose of assuring uniformity of operation of the Bridge as a unit. Simultaneously upon the acquisition of the stock by the Michigan Company, the joint mortgage issue hereinbefore mentioned, was ex- [fol. 17] ecuted and the stock was deposited and pledged with the New York Trust Company as Trustee, to secure payment of the mortgage bonds and of the debentures; attention being called to the Deposit agreement executed under date of August 1st, 1927, wherein the Trustee retaind control of this stock during the period of the bonded and debenture indebtedness.

The operations are exclusively in Canada, the property owned by the Canadian Transit Company is located solely in Canada and the Charter granted to the Canadian Company could be granted only to a Canadian Company and not to the principal Corporation Detroit International Bridge Company.

D

Unamortized Discounts and Expense on Funded Debt

Item 11 of unamortized discount and expense on funded debt in both the 1929 and 1930 reports is described on

pages 7 and 8 of the affidavit attached hereto designated "Exhibit 9" and made a part hereof.

XIV

Your petitioner therefore contends that said determination by the Secretary of State and the Corporation Tax Appeal Board in the computation of the privilege fee for the years 1929 and 1930 is erroneous and illegal for the reasons following:

(a) The statute provides that in computing the privilege fee "said computaion shall be made upon the corporation's property, both tangible and intangible, *owned* or *used* in Michigan * * * provided that in determining the amount of value of intangible property, including capital investments, owned or used in this state by either a [fol. 18] domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purpose hereof, if used in or acquired from the conduct of its business in this state *irrespective of the domicile* of the corporation." The construction of the taxing statute Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, by the Secretary of State and the Corporation Tax Appeal Board allocating all of the items of intangibles which were neither owned or used or acquired in or from the conduct of its business in the State of Michigan, but rather which were owned, used or acquired in or from the conduct of business of the petitioner without the State of Michigan, is improvident and improper and contrary to law.

(b) The Secretary of State and the Corporation Tax Appeal Board erred in including the item of the bridge structure and all appurtenances thereto, together with the franchise and rights, in the computation of the 1930 privilege fee. Act No. 85 of the Public Acts of 1921, as amended by Act No. 175, Section 5, of the Public Acts of 1929, provides that "none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made." In view

of the fact that the bridge structure and its appurtenances are used by the petitioner exclusively in interstate and foreign commerce, the construction of the Secretary of State and the Corporation Tax Appeal Board is improvident and improper in including such item in the computation of the tax.

(c) Said Secretary of State and Corporation Tax Appeal Board further erred in including said bridge struc- [fol. 19] ture and appurtenances thereto in the computation of the 1930 privilege fee, in that by so doing it illegally imposed a tax upon the doing of interstate and foreign commerce by the appellant in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

(d) Said Secretary of State and Corporation Tax Appeal Board further erred in including said bridge structure and appurtenances thereto in the computation of the 1930 privilege fee in that by so doing it denied unto the petitioner the equal protection of the law guaranteed to it under the Fourteenth Amendment to the Constitution of the United States.

(e) Said Corporation Tax Appeal Board further erred in holding that the Detroit International Bridge Company was subject to the 1930 privilege fee in that said Detroit International Bridge Company as organized for the sole purpose of engaging in foreign commerce; that at December 31st, 1929, and continuously thereafter, it has devoted itself exclusively to the doing of foreign commerce, having no other corporate powers, so that to impose a privilege fee upon this corporation would be wrongfully imposing a tax upon the doing of foreign commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

XV

The bridge structure was not entirely completed nor opened until the fall of 1928, and, therefore, was not in that period being used exclusively in interstate and foreign commerce. Petitioner waived its claim to have this item excluded in the computation of the 1929 tax, based upon the petitioner's condition as of December 31st, 1928,

although it is respectfully submitted that this item of the bridge structure in the 1930 report, as is hereinabove set [fol. 20] forth, should be excluded from the computation of the 1930 tax since during that period, and continuously, thereafter, said structure has been and is now being used exclusively in interstate and foreign commerce.

XVI

Your petitioner respectfully submits that the determination by this Court of the questions here raised in issue is necessary to properly ascertain your petitioner's rights.

Wherefore your petitioner prays that leave to appeal in the nature of a Writ of Certiorari may be issued out of and under the seal of the Supreme Court of Michigan directed to the Corporation Tax Appeal Board and to Paul W. Voorhies, Attorney General, Howard C. Lawrence, State Treasurer, and Oramel B. Fuller, Auditor General, constituting said Corporation Tax Appeal Board, to review and reverse the order of the said Appeal Board, and of said Secretary of State, and that all proceedings under said order of the Appeal Board and said determination of the Secretary of State, in the computation of both the 1929 and 1930 privilege fee of petitioner, be thereby stayed in accordance with law until the final decision of this Court in the case.

Detroit International Bridge Company, by Joseph A. Bower, its President. Detroit International Bridge Company. Incorporated Michigan, 1927. Stevenson, Butzel, Eaman & Long, 2288 First Nat'l Bank Bldg., Detroit, Michigan, Attorneys for Plaintiff.

[fols. 21 & 22] *Duly sworn to by Joseph A. Bower. Jurat omitted in printing.*

[fol. 23] EXHIBIT 1 TO PETITION

1929 Amended Annual Report of Detroit International Bridge Company

Take notice:

It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.

August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.

(Name of Corporation:) Detroit International Bridge Company.

(Postoffice address:) Detroit, Michigan.

(Street and No.:) 730 21st Street.

John S. Haggerty, Secretary of State, Lansing, Michigan.

SIR: In accordance with the provisions of Act No. 84, Public Acts of 1921, as amended, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December, 1928, (Do not change this date) or (Date:) —— (close of fiscal year) or the date of incorporation during this year.

1. The place or places at which the corporation's business has been engaged during the year is Detroit, Mich.

2. Where incorporated: (State:) Michigan. Date of incorporation: June 21, 1927. (Michigan.) Date admitted: ——. (Foreign.)

[fol. 24] 3. The following are the officers and directors of the corporation:

Names of officers	Post Office addresses
I. A. Bower, President	100 Broadway, New York City, N. Y.
J. L. Fozard	730 21st St., Detroit, Mich.
J. W. Austin, Vice-President	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender, Secretary	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Secretary	100 Broadway, New York City, N. Y.
Sherman D. Callender, Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Treasurer	100 Broadway, New York City, N. Y.
Harry Robinson, Asst. Treasurer	100 Broadway, New York City, N. Y.

Names of directors	Post Office addresses
J. A. Bower	As above.
J. W. Austin	As above.
Sherman D. Callender	As above.
David Graham	As above.
Alfred A. Cook	20 Pine St., New York City, N. Y.
Alfred C. Dent	63 Wall St., New York City, N. Y.
Jansen Noyes	15 Broad Street, New York City, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common				
Preferred	$5,000,000.00	$1,100,000.00		$100.00
Amount				
Common Non-Par.	100,000 shares	100,000 shares	— shares	

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash, Including Cash on Special Deposit		$1,069.65	$5,673,155.71
2. Notes and Accounts receivable			
Less reserve for bad debts			7,781.52
[fol. 25]			
3. Deferred payment notes, contracts, etc.	$		
* Less reserve for deferred profits			
4. Inventories (To include raw materials, work in process, finished goods, supplies, etc.):			
5. Investments			1,304,630.70
6. Loans			
7. Deferred charges:			
Prepaid insurance, taxes, etc.			
8. Capital assets:			
Land and Bridge under Construction	$9,031,300.90		
Machinery and equipment			
Furniture and Fixtures	524.70		
Delivery equipment			
Automobile	1,434.00		
Total	$9,033,259.60		
Less reserve for depreciation and depletion		$9,033,259.60	
9. Patents (To include copyrights, trade-marks, etc.).			

10. Good-will			
11. Other Assets (Describe fully):			
** Working Advances	$2,626.45		
Unamortized Discount and Expense on Funded Debt	1,234,217.19		
		1,626.45	1,000.00
12. Total Assets		$9,035,955.70	$6,986,567.93

[fol. 26]

6. Liabilities.

13. Notes and Accounts Payable		$1,508,422.08	
14. Accrued expenses (Interest)		557,818.74	
15. Other Liabilities (describe fully)			
First Mortgage Bonds	$5,990,500.00		
Debentures	8,000,000.00		
		13,990,500.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	$1,100,000.00		
Common stock (less stock in treasury)			
Non-par stock (No. of shares)	100,000.00	1,200,000.00	
17. Surplus and undivided profits:			
(Enter deficit in red)			
Total Liabilities		$17,256,740.82	

* For record purposes only.

** This is a bookkeeping item and does not represent an asset which should enter into the computation of tax.

7. Property exclusively used in interstate commerce: ——, $—.

(This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce.)

[fol. 27] 8. The amount of capital stock paid in: (a) In cash (See Answer to Question 8 below); (b) in property (See Answer to Question 8 below). (Good-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

No par value stock: Book value per share (See Answer to Question 8 below); Price fixed by corporation for sale of (See Answer to Question 8 below).

Answer to Question 8

The original capitalization of the company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently the authorized capital was increased in 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100.00 a share. The additional 99,000 common shares and 11,000 preferred shares were issued as set forth in an affidavit filed with the Secretary of State at the time. A copy of this affidavit is attached hereto and made a part hereof.

Rider to Question 5, Subds. 8 and 12

The capital asset, "Land and Bridge under Construction," and the liability, "Notes and accounts payable" appear on the books of the corporation as $9,469,729.68 and $1,946,950.86, respectively. The difference of $438,428.78 represents that portion of certain expenditures made in connection with the construction of the Bridge property allocable to the Canadian side of the Bridge and forming part of the cost of that side. Only the American [fol. 28] side of the Bridge is owned by the corporation, the Canadian side being owned by The Canadian Transit Company, a Canadian company. These expenditures were made by the corporation, but no allocation of them was made until after the filing of the original report. Consequently the total expenditures appeared on the books of the corporation as forming part of the cost of the Amer-

ican side of the Bridge, whereas $438,428.78 of those expenditures formed part of the cost of the Canadian side. Accordingly, in this amended report, the book value of the American side has been reduced by that figure. A large part of the item "Notes and Accounts Payable" is owing The Canadian Transit Company. The liability of the corporation to The Canadian Transit Company having been reduced by expenditures of $438,428.78 made for its account, the liabilities reported in this amended report have been decreased by that figure also.

STATE OF NEW YORK,
County of New York, ss:

Joseph A. Bower, J. L. Fozard, and Frances M. Bradford, being duly sworn, on oath depose and say that they are three of the stockholders of Detroit International Bridge Company, a Michigan corporation, and that the following described property, viz:

All of the property and assets of Detroit Bridge Corporation, a Delaware corporation, and substantially all of the property and assets (except certain contracts) of American Transit Company, a Nevada corporation, including all rights of American Transit Company to con- [fol. 29] struct, maintain and operate a bridge and the approaches thereto across the Detroit River from the City of Detroit, Michigan, to a point near Windsor, Province of Ontario, Dominion of Canada, granted by Act of Congress of the United States of America approved March 4, 1921, as amended by Acts of Congress approved April 7, 1924, March 3, 1925, and May 13, 1926, and all rights of American Transit Company under the permit for the construction and operation of said bridge granted by the Secretary of War of the United States of America under date of May 3, 1927, and by the Chief of Engineers of the United States Army under date of May 4, 1927, and all of the outstanding shares, except directors' qualifying shares, of The Canadian Transit Company, a corporation organized under special act of the Parliament of Canada, and the amendments thereto, to build, maintain and operate a bridge across the Detroit River from at or near Windsor in the Province of Ontario, to Detroit, Michigan, and to unite with any company organized under the laws

of the State of Michigan, in financing, controlling, building, working, maintaining and using said bridge, terminals and approaches, and all agreements and contracts for the financing, constructing, maintaining and operating the bridge to be known as the Detroit International Bridge across the Detroit River from Detroit to the town of Sandwhich in the Province of Ontario,

has been actually transferred to Detroit International Bridge Company, a Michigan corporation, in consideration of the payment of not exceeding $900,000.00 in cash [fol. 30] and the issuance and delivery of $1,100,000 7% preferred capital stock of said Bridge Company and 99,000 full paid and non-assessable shares without nominal or par value of the common capital stock of said Bridge Company and certain agreements of indemnity executed by said Bridge Company.

The value of the above described property is in excess of said sum of $900,000.00 in cash and of the aggregate par value, to wit $1,100,000, of said preferred stock, but it is impracticable at the present time to determine with any degree of certainty the amount of such excess, so as to fix the value of said property, but when such amount is determined, which it is estimated will be shortly after the formal opening of the Detroit International Bridge for public traffic, an affidavit supplemental hereto, fixing the value of such excess, will be filed.

And further deponents say not.

(Sgd.) Joseph A. Bower, (Sgd.) J. L. Fozard, (Sgd.) Frances M. Radford.

Subscribed and sworn to before me this August 30, 1927. (Sgd.) Frederick G. Brown, Notary Public, Richmond County. Certificate filed in N. Y. Co. No. 1083. N. Y. Co. Register's No. 9779. (Notarial Seal.)

[fol. 31] 9. The nature and kind of the business in which the corporation has been engaged during the year: Construction of a Bridge between Michigan and Canada.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1928, or (Date:) —— (Close of

fiscal year), or the date of incorporation during this year.

Witness our Signatures:

"Joseph A. Bower," President. "David Graham," Asst. Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, Joseph A. Bower, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

"Joseph A. Bower" (Official Signature).

Subscribed and sworn to before me this 13th day of May, 1930. "Frederick G. Brown," Notary Public. Notary Public, Richmond County. Certificate filed in New York Co. My commission expires March 30, 1931.

Instructions

1. The privilege fee is based upon property value, therefore no deduction should be made from listed assets other [fols. 32-35] than reasonable reserves which are necessary to reduce them to net worth.

2. If this report is at variance with your books in any respect, or if any deviation has been made from book entries, kindly attach a statement of explanation.

3. Do not submit reports as of any other date than Dec. 31, or close of fiscal year.

4. Do not have report signed by others than President or Vice-President, and Secretary or Acting Secretary.

5. Two dollars filing fee must accompany report, together with privilege fee based upon paid-up capital and surplus (2½ mills on the dollar). One check covering fees acceptable.

6. Foreign corporations may compute privilege fee upon that portion of its paid-up capital stock and surplus represented in the ratio the Michigan property bears to the entire property.

7. Do not deduct from paid-up capital in computing privilege fee. (The statute forbids it.)

8. Please see that your report is properly attested.

Tentative computation of privilege fee as made by corporation: $——.
(Do not fill in space below.)

Foreign Corporations.—Fee as Computed by Secretary of State

Percentage	$....	filing fee.
Paid-up capital	....	on capital stock.
Surplus	....	on surplus.
Total	....	
Difference	....	due state.
	....	due corporation.

Filed, 1929, with Secretary of State.
Approved and accepted 1929.

[fol. 36] EXHIBIT 5 TO PETITION

1930 Annual Report of Detroit International Bridge Company

Take notice:
It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.
August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.
(Name of Corporation:) Detroit International Bridge Company.
(Postoffice Address:) Detroit, Michigan.
(Street and No.:) 21st and Howard Streets.

John S. Haggerty, Secretary of State, Lansing, Michigan.

SIR: In accordance with the provisions of Act No. 84, Public Acts of 1921, as amended, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December, 1929, (Do not change this date) or (Date:) —— (close of fiscal year), or the date of incorporation during this year.

1. The place or places at which the corporation's business has been engaged during the year is, Detroit, Michigan.

2. Where incorporated, (State:) Michigan. Date of incorporation: June 21, 1927. (Michigan.) Date admitted: ——. (Foreign.)

3. The following are the officers and directors of the corporation:

Names of officers	Post Office addresses
J. A. Bower, President	165 Broadway, New York, N. Y.
J. W. Austin, Vice-President	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender, Secretary	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Ass't Secretary	100 Broadway, New York, N. Y.
[fol. 37]	
Sherman D. Callender, Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Ass't Treasurer	100 Broadway, New York, N. Y.
Harry Robinson, Ass't Treasurer	165 Broadway, New York City.

Names of directors	Post Office addresses
J. A. Bower	165 Broadway, New York, N. Y.
J. W. Austin	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender	1706 Dime Bank Bldg., Detroit, Mich.
David Graham	100 Broadway, New York, N. Y.
Alfred A. Cook	20 Pine Street, New York, N. Y.
Alfred C. Dent	165 Broadway, New York, N. Y.
Jansen Noyes	35 Wall Street, New York, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common	.....	.....	.....	.....
Preferred	$5,000,000.00	$1,100,000.00	.....	$100.00
Amount	.....	.....	.....	.....
Common Non-Par.	100,000 shares	100,000 shares	— shares	.....

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash		$6,271.64	$44,124.15
2. Notes and Accounts receivable	$		
Less reserve for bad debts		2,618.66	36,072.76
3. Deferred payment notes, contracts, etc.	$		
* Less reserve for deferred profits			
4. Inventories: (To include raw materials, work in process, finished goods, supplies, etc.)			
5. Investments			2,471,610.63
6. Loans			
7. Deferred charges:			
Prepaid insurance, taxes, etc.			
8. Capital assets:			
Land	$1,948,215.69		
[fol. 38] Buildings	6,692,041.57		
Machinery and equipment			
Furniture and Fixtures	6,076.79		
Delivery equipment	22,703.84		
Franchises, Rights, etc.	2,006,677.54		
Total	$10,675,715.43		
Less reserve for depreciation and depletion	14,041.17	10,661,674.26	

9. Patents: (To include copyrights, trade-marks, etc.).	.....	.....	.....
10. Good-will	.....	.....	.....
11. Other Assets (Described fully):			
Special Deposits	$1,770,152.81	1,232.00	1,768,920.81
Working Advances	1,150.75	1,150.75	
Deferred Charges and Prepaid Items	275,071.55	275,071.55	
Unamortized Discount and Expense on Funded Debt	1,153,458.98		1,153,458.98
12. Total Assets	.....	$10,948,018.86	$5,474,187.33
6. Liabilities:			
13. Notes and Accounts Payable	.....	$826,278.24	
14. Accrued expenses (Interest)	.....	557,904.16	
15. Other Liabilities (describe fully)	.....		
6½% First Mortgage Bonds	5,989,000.00		
7% Sinking Fund Gold Debentures	8,000,000.00	13,989,000.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	$1,074,379.30		
Common stock (less stock in treasury)	.....		
Non-par stock (No. of shares 100,000)	100,000.00	1,174,379.30	
17. Surplus and undivided profits (Enter deficit in red)	.....	125,355.51	
Total Liabilities	.....	$16,422,206.19	

*For record purposes only.

7. Property exclusively used in interstate commerce. Entire Capital Assets—$10,661,674.26.

(This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce.)

[fol. 39] 8. The amount of capital stock paid in: (a) In cash (See Answer to Question 8 below); (b) in property (See Answer to Question 8 below). (Good-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

No par value stock: Book value per share (See Answer to Question 8 below); Price fixed by corporation for sale of (See Answer to Question 8 below).

Answer to Question 8

The original capitalization of the company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently the authorized capital was increased to 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100.00 a share. The additional 99,000 common shares and 11,000 preferred shares were issued as set forth in an affidavit filed with the Secretary of State at the time. A copy of this affidavit is attached hereto and made a part hereof.

State of New York,
County of New York, ss:

Joseph A. Bower, J. L. Fozard, and Frances M. Radford, being duly sworn, on oath depose and say, that they are three of the stockholders of Detroit International Bridge Company, a Michigan Corporation and that the following described property, viz:

All of the property and assets of Detroit Bridge Corporation, a Delaware corporation, and substantially all of the property and assets (except certain contracts) of [fol. 40] American Transit Company, a Nevada corporation, including all rights of American Transit Company to construct, maintain and operate a bridge and the approaches thereto across the Detroit River from the City

of Detroit, Michigan, to a point near Windsor, Province of Ontario, Dominion of Canada, granted by Act of Congress of the United States of America approved March 4, 1921, as amended by Acts of Congress approved April 7, 1924, March 3, 1925, and May 13, 1926, and all rights of American Transit Company under the permit for the construction and operation of said bridge granted by the Secretary of War of the United States of America under date of May 3, 1927, and by the Chief of Engineers of the United States Army under date of May 4, 1927, and all of the outstanding shares, except directors' qualifying shares, of The Canadian Transit Company, a corporation organized under special act of the Parliament of Canada, and the amendments thereto, to build, maintain and operate a bridge across the Detroit River from at or near Windsor in the Province of Ontario, to Detroit, Michigan, and to unite with any company organized under the laws of the State of Michigan, in financing, controlling, building, working, maintaining and using said bridge, terminals and approaches, and all agreements and contracts for the financing, constructing, maintaining and operating the bridge to be known as the Detroit International Bridge across the Detroit River from Detroit to the town of Sandwich in the Province of Ontario,

has been actually transferred to Detroit International Bridge Company, a Michigan corporation, in consideration [fol. 41] of the payment of not exceeding $900,000.00 in cash and the issuance and delivery of $1,100,000 7 % preferred capital stock of said Bridge Company and 99,000 full paid and non-assessable shares without nominal or par value of the common capital stock of said Bridge Company and certain agreements of indemnity executed by said Bridge Company.

The value of the above described property is in excess of said sum of $900,000.00 in cash and of the aggregate par value, to wit $1,100,000, of said preferred stock, but it is impracticable at the present time to determine with any degree of certainty the amount of such excess, so as to fix the value of said property, but when such amount is determined, which it is estimated will be shortly after the formal opening of the Detroit International Bridge for

public traffic, an affidavit supplemental hereto, fixing the value of such excess, will be filed.

And further deponents say not.

(Sgd.) Joseph A. Bower, (Sgd.) J. L. Fozard, (Sgd.) Frances M. Radford.

Subscribed and sworn to before me this August 30, 1927. (Sgd.) Frederick G. Brown, Notary Public, Richmond County. Certificate filed in N. Y. Co. No. 1083. N. Y. Register's No. 9779. (Notarial Seal.)

[fol. 42] 9. The nature and kind of the business in which the corporation as of Dec. 31, 1929, or (Date.) —— (Close struction and Operation of Bridge between Detroit, Mich., and Sandwich, Ont.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1929, or (Date.) ——(Close of fiscal year), or the date of incorporation during this year.

Witness our Signatures:

J. A. Bower, President. David Graham, Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, David Graham, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

David Graham (Official Signature).

Subscribed and sworn to before me this 28th day of August, 1930. Frederick G. Brown, Notary Public. Notary Public, Richmond County. Certificate filed in New York Co. My commission expires March 31, 1931.

Instructions

1. The privilege fee is based upon property value, therefore no deduction should be made from listed assets other

than reasonable reserves which are necessary to reduce them to net worth.

[fol. 43] 2. If this report is at variance with your books in any respect, or if any deviation has been made from book entries, kindly attach a statement of explanation.

3. Do not submit reports as of any other date than Dec. 31, or close of fiscal year.

4. Do not have report signed by others than President or Vice-President, and Secretary or Acting Secretary.

5. Two dollars filing fee must accompany report, together with privilege fee based upon paid-up capital and surplus (2½ mills on the dollar). One check covering fees acceptable.

6. Foreign corporations may compute privilege fee upon that portion of its paid-up capital stock and surplus represented in the ratio the Michigan property bears to the entire property.

7. Do not deduct from paid-up capital in computing privilege fee. (The statute forbids it.)

8. Please see that your report is properly attested.

Tentative computation of privilege fee as made by corporation: $——.
(Do not fill in space below.)

Foreign Corporations.—Fee as Computed by Secretary of State

Percentage	$....	filing fee.
Paid-up capital	....	on capital stock.
Surplus	....	on surplus.
Total	....	
Difference	....	due state.
		due corporation.

Filed, 1930, with Secretary of State.
Approved and accepted, 1930.

3—51

[fol. 44] EXHIBIT 6 TO PETITION

The Determination of the Secretary of State of the 1930 Privilege Fee

Department of State, Lansing

AEA:GC, Corporation

June 4th, 1931.

Stevenson, Butzel, Eaman & Long, First National Bank Building, Detroit, Michigan.

Re Detroit International Bridge Company 1929 privilege tax

GENTLEMEN: The Tax Appeal Board has rendered its decision in connection with the above matter and we are enclosing a copy of the order.

The total privilege fee in this case amounted to $3,000.00 together with the $2.00 filing fee. $12.00 was submitted by the corporation which leaves a balance due of $2,990.00.

The annual privilege tax computed on the basis of the 1929 report by locating the intangibles of this corporation in Michigan amounted to $2,935.95, together with $2.00 filing fee. $147.92 was submitted which leaves a balance due of $2,790.03.

May we ask that you give this matter prompt attention and send in the balance due the State without further delay.

Respectfully, (Sgd.) Frank D. Fitzgerald, Secretary of State.

[fol. 45] EXHIBIT 7 TO PETITION

Notice of Appeal of 1930 Fee to the Corporation Tax Appeal Board

June 8, 1931

Honorable Paul W. Voorhies, Attorney General, Chairman of the Tax Appeal Board, Lansing, Michigan.

Re Detroit International Bridge Company 1930 privilege tax

DEAR SIR: We received a communication yesterday morning from Honorable Frank D. Fitzgerald, Secretary of State for the State of Michigan, determining the amount of the privilege fee said to be due under the 1930 report.

This communication is intended to serve as notice to you and to the Tax Appeal Board that the Detroit International Bridge Company conceives itself aggrieved as to the amount of such fee based upon the facts and desires a determination thereof by the Tax Appeal Board in the manner provided by the laws of the State of Michigan.

We are enclosing herewith our check in your favor in the amount of $10.00 as payment of the statutory appeal fee. With one exception the question raised in the computation of the 1930 tax involves the proper allocation of intangible items ruled upon in the appeal to your board of the 1929 annual report.

We have just received the ruling of the appeal board on [fol. 46] the 1929 tax adverse to the Bridge Company. The same ruling will undoubtedly be made in reference to the 1930 tax in respect to these items. The one item not involved in the 1929 tax but raised in the 1930 tax is the question of whether or not the Bridge Company has correctly deducted that portion of its property, being the bridge construction and property from the computation as being used exclusively in interstate and international commerce. The Secretary of State has had an informal ruling from the Attorney General's office on this question.

The Bridge Company will waive the formality of a hearing and submit the question on memorandum to the Tax Appeal Board so that both the 1929 and 1930 annual taxes can be appealed to the Supreme Court in one proceeding.

May we have your acknowledgment accordingly.

Yours very truly, Stevenson, Butzel, Eaman & Long.

21/IMP.
(Encs.)

[fol. 47] EXHIBIT 8 TO PETITION

Certificate and Order from the Corporation Tax Appeal Board Certifying to the Secretary of State Its Computation of the 1930 Tax

STATE OF MICHIGAN:

In re Appeal of Detroit International Bridge Company

At a meeting of the Corporation Tax Appeal Board held at the office of the Attorney General June 9th, 1931, the Ap-

peal of the Detroit International Bridge Company was considered.

From all facts and evidence presented it is the opinion of this Board that the Secretary of State is correct in assuming that intangible personal property consisting of cash, notes and accounts receivable, investments, special deposits and unamortized discount and expense on funded debt is property located within Michigan for the purpose of determining the privilege tax.

We hereby certify to the Secretary of State the following computation of the privilege tax for the year 1930:

Paid up capital—$1,174,379.30 @ 2½ mills—$2,935.95 Total Privilege fee.

(Sgd.) Paul K. Voorheis, Attorney General, Chairman, by Emerson R. Boyles, Deputy. (Sgd.) Howard C. Lawrence, State Treasurer, by O. F. Beamer, Deputy. (Sgd.) Oramel B. Fuller, Auditor General.

Dated this 9th day of June, A. D. 1931.

[fol. 48] EXHIBIT 9 TO PETITION

Affidavit Filed with Corporation Tax Appeal Board Explaining Items of Intangibles in the 1929 Report

BEFORE THE TAX APPEAL BOARD, STATE OF MICHIGAN

In the Matter of the Appeal of DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan Corporation

STATE OF NEW YORK,
County of New York, ss:

Joseph A. Bower, being duly sworn, deposes and says: That he is the President of Detroit International Bridge Company, a Michigan corporation, the appellant in this proceeding; that he signed and verified the original and the amended annual report of Detroit International Bridge Company for the year 1929, and has knowledge of the statements therein made; that annexed hereto is a statement in explanation of certain items listed in said report which items the Secretary of State in computing the privilege fee

based upon said report has treated as being located within Michigan; that deponent is familiar with the facts set forth in the annexed statement and that they truly set forth the nature of said items; and deponent respectfully submits, upon the advice of counsel, that the treatment of said items by the Secretary of State and his computation of the privilege fee based upon said report are contrary to law.

Joseph A. Bower.

Sworn to before me this 14th day of July, 1930. Samuel Black, Notary Public, Queens County, No. 3328. Queens County Register's Office, 9904. Certificate filed in N. Y. County No. 1424. N. Y. County Register's Office No. 2-B-924. Certificate filed in King's County No. 354. King's County Register's Office No. 2589. (Notarial Seal.)

[fol. 49] No. 33443, Series C

State of New York,
County of New York, ss:

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, do hereby certify, That said Court is a Court of Record, having by law a seal; that Samuel Black, whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a notary public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Queens with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 14th day of July, 1930.

Daniel E. Finn, Clerk. (Notarial Seal.)

[fol. 50] Explanation of Certain Items Listed on Page 2 of Annual Report of Detroit International Bridge Company for 1929

Cash, Including Cash on Special Deposit

This item, the total of which is $5,673,155.71, represents three different funds.

The first, amounting to $52,041.60, is an account of the Bridge Company in a New York bank. Moneys in this account can be withdrawn only by officers of the Bridge Company permanently located in New York City. The account is incidental to the business of the Bridge Company transacted from the office of its President in New York City. Withdrawals are made to defray expenses incurred in transactions taking place in Michigan or in New York as the case may be. The moneys in the account on and prior to December 31, 1928, did not arise from business carried on in Michigan as the Bridge was not in operation until November 15, 1929, but consisted of funds turned over to the Bridge Company at its New York office by the Trustee under the Joint First Mortgage and the Trust Agreement hereinafter mentioned. The funds were either a part of the cash held by the Trustee as security for the bonds and debentures hereinafter mentioned, or constituted interest upon that cash.

The second fund, amounting to $5,620,356.40, is held by The New York Trust Company, a trust company organized under the laws of the State of New York and having its place of business in New York City, as Trustee under the Joint First Mortgage of Detroit International Bridge Company and The Canadian Transit Company, securing bonds of those companies, and as Trustee under the Trust Agreement of Detroit International Bridge Company, [fol. 51] securing debentures of that company. The bonds secured by the Joint First Mortgage and the debentures secured by the Trust Agreement were issued to bankers for cash in August, 1927. The amount in question is the balance of that cash. The cash was immediately deposited with the

Trustee pursuant to the terms of the Joint First Mortgage and the Trust Agreement to be held as security for the bonds and debentures. The Trustee, being authorized so to do by the provisions of the Joint First Mortgage and the Trust Agreement, has loaned this cash on call to individuals and corporations located and doing business in New York. It can be obtained by the Bridge Company only to reimburse it for expenditures made or indebtedness incurred on account of the cost of construction of the Bridge. Until such reimbursement it is held by the Trustee as security for the bonds and debentures, and the Bridge Company cannot use the funds in its business. The Trustee has control of the funds pursuant to the provisions of the Joint First Mortgage and the Trust Agreement until the Bridge Company submits to its appropriate certificates of its officers and engineers and opinions of counsel proving its rights to reimburse as aforesaid. This cash on special deposit, therefore, is not being used in, and was not derived from, the conduct of the business of the Bridge Company in Michigan. It is being used as collateral security for the bonds and debentures or for the purpose of making loans on call, or both, and in any case it is being used in New York. Its only connection with Michigan is that it is anticipated that, upon compliance with certain conditions, the money will be used to reimburse the Bridge Company for the cost of construction of the Bridge. It is to be noted, furthermore, that the Joint First Mortgage and the Trust Agreement define cost of construction as including interest upon the bonds and [fol. 52] debentures until the completion of the Bridge which was expected to be August 1, 1930. The interest payable after December 31, 1928, to and including August 1, 1930, amounts to $1,900,000 and is payable at the offices of the Trustee in New York City. Consequently of the $5,621,-114.11, none of which originated in or was derived from Michigan or ever held there, at least $1,900,000 was or will be disbursed for interest in New York and will not even be used to reimburse the Bridge Company for expenditures made or indebtedness incurred in Michigan.

The third fund, amounting to $755.71, is held by the Trustee in the sinking fund created by the Joint First Mortgage. With money obtained from the Trustee the Bridge Company purchased property in Detroit which was subjected to the lien of the Joint First Mortgage. Subse-

quently this property was sold for $20,000 and the proceeds of sale were deposited in the sinking fund as required by the provisions of the Mortgage. The Mortgage provides that all moneys paid into the sinking fund shall be used to purchase or retire outstanding bonds. Pursuant to this provision all of the $20,000, with the exception of $755.71, has been so used. The amount of $755.71 must be held by the Trustee as security for the bonds and can be disposed of only to purchase or retire bonds. In no event can it be turned over to the Bridge Company.

Notes and Accounts Receivable

The item of $7,781.52 arises as follows. Under the contract for the construction of the Bridge the contractors are required to pay certain city and county property taxes during the period of construction. The Bridge Company paid such taxes in the amount of $7,781.52 (the money with which [fol. 53] to make such payment having been derived from the cash on special deposit with the Trustee as aforesaid) and the contractors are, therefore, liable to the Bridge Company in that amount. The contractors are McClintic-Marshall Company, a Pennsylvania corporation having its principal office and place of business in Pittsburgh. On and prior to December 31, 1928, the books of the Bridge Company were kept in New York City. During the same period practically all transactions between the Bridge Company and the contractors were handled in New York City. The contract for the construction of the Bridge was signed in New York and the negotiations relating thereto took place in New York.

Investments

The item of investments, the total of which is $1,304,630.70, consists of stock of The Canadian Transit Company of the value of $1,280,000 and of stock of Detroit International Bridge Company itself of the value of $24,630.70.

The Canadian Transit Company is a company organized under the laws of the Dominion of Canada and it does no business in Michigan. It is the owner of that part of the Ambassador Bridge situated in Canada. In August, 1927, the Bridge Company acquired the stock of The Canadian Transit Company by a transfer in New York City for

a consideration, none of which was acquired from the conduct of its business in Michigan, the consideration being the agreement of the Bridge Company out of the proceeds of the sale of its debentures to make payment for the account of The Canadian Transit Company of such sum as shall be necessary, in excess of one-half of the proceeds of the sale of the bonds jointly issued by both companies, to complete the part of the Bridge located in Canada. The [fol. 54] debentures were sold in New York as above explained so that the proceeds of sale were not derived from Michigan, and, of course, the part of the proceeds needed to pay for the stock were expended in Canada to construct the Canadian portion of the Bridge. At practically the same time that the stock was acquired, it was pledged with The New York Trust Company, as Trustee, to secure the payment of debentures and it remains in New York in the possession of the Trustee. Voting power remains in the Bridge Company. The stock, therefore, is being used only in Canada and in New York; in Canada, since it is by means of the voting power of the stock that the Bridge Company controls the operations of the Canadian side of the Bridge; in New York, since the stock is pledged as collateral security in that state for a loan effected in that state.

The stock of Detroit International Bridge Company which the Bridge Company holds consists of treasury shares. When the Bridge Company in August, 1927, acquired the assets of American Transit Company, the stockholders of the latter Company became entitled to receive shares of stock of the Bridge Company. Some of these shares of the value of $24,630.70 were bought back by the Bridge Company. The stock certificates representing this investment have always been kept in New York City. The money by means of which these shares were repurchased was raised by the Bridge Company in New York City.

Working Advances

This item totals $2,626.45 and the part located in Michigan was by mistake originally reported as $1,500. The correct figures are $1,626.45 within Michigan and $1,000 without Michigan. The amount without Michigan consists

[fol. 55] of a bank account in Canada subject to check by a Vice-President of the Bridge Company in payment of expenses incurred in Canada in connection with the construction of the Canadian side of the Bridge.

Unamortized Discount and Expense on Funded Debt

When the bonds and debentures of the Bridge Company were sold to the bankers in August, 1927, the Bridge Company did not receive in payment the face value of these obligations, but they were purchased by the bankers at a discount, and the Bridge Company incurred and paid certain expenses in connection with the sale. This discount and expense are represented by the above item. It is treated as an asset by the Bridge Company upon its balance sheet in accordance with sound accounting practice, and it will be reduced each year by a certain amount for a period of twenty-five years, since the bonds and debentures mature in twenty-five years. The theory upon which accountants proceed in sanctioning this practice is that since the item is a payment for the use of money over a long period it is fair that the burden of the payment should be spread over the entire period and not charged entirely to the year in which it was made. In fact and in law, however, it does not represent an asset or property at all. To treat it as an asset for tax purposes would mean that, although in fact the Bridge Company has received less than the face value of the bonds and debentures, it is being taxed as though it had received their entire face value.

If the item is to be treated as property, it should be considered, it is submitted, as being property "without Michigan." At the time the item was created the Bridge Company was in process of organization and preparation [fol. 56] for commencement of business. It had not yet started to construct and operate the Bridge. The item in question arose in connection with the financing of the Bridge. That financing took place entirely in New York City. The Discount and Expense in fact did not represent a payment of any kind by the Bridge Company to the bankers so that it cannot be said that the item reflects cash or any other property of the Bridge Company which was ever located in Michigan or used or derived from the con-

duct of business in Michigan. Even if the item is deemed to represent a payment of cash by the Bridge Company to the bankers by way of a commission, that cash was derived from the bankers in New York and the payment was made in the course of financing, all of which was done in New York. If the item be considered as a prepayment in the nature of interest, it is submitted that its situs is New York, because (a) the original financing took place in New York so that the prepayment was made from New York funds not acquired in Michigan, (b) the bonds and coupons are payable only in New York and Canada, and (c) the money with which to pay them enters into the computation of the tax as other assets. The item, treating it as an asset, was not derived from the conduct of the business of the Bridge Company in Michigan and is not used in the conduct of that business.

[fol. 57] IN SUPREME COURT OF MICHIGAN

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

NOTICE OF ALLOWANCE OF APPEAL

To Stevenson, Butzel, Eaman and Long, First National Bank Bldg., Detroit, Michigan, Attorneys for Detroit International Bridge Company, Appellant:

You are hereby notified that the Supreme Court has allowed your appeal in the above entitled cause from the determination of the Corporation Tax Appeal Board.

This notice is given to you pursuant to rule 60, section 2.

Paul W. Voorhies, Attorney General; Howard C. Lawrence, State Treasurer; Oramel B. Fuller, Auditor General, Comprising the Corporation Tax Appeal Board, by Paul G. Eger, Assistant Attorney General.

Dated July 13, 1931.

[fol. 58] IN SUPREME COURT OF MICHIGAN

DETROIT INTERNATIONAL BRIDGE COMPANY, Plaintiff and Appellant,

vs.

CORPORATION TAX APPEAL BOARD, Defendant and Appellee

NOTICE OF APPEARANCE TO FULL NOTICE APPEAL AND RETURN OF CORPORATION TAX APPEAL BOARD

I

The Corporation Tax Appeal Board, defendant and appellee, hereby appears in this appeal by Paul W. Voorhies, Attorney General.

II

The following additional portions of the record and files are to be incorporated in the record on appeal:

"A." Original 1929 annual report of Detroit International Bridge Company.

"B." Receipt issued for fee of $12.00 received in payment of privilege and filing fee on 1929 report of Detroit International Bridge Company.

"C." Opinion by Attorney General.

"D." Letter from Secretary of State to Detroit International Bridge Company dated January 30, 1930, disallowing claim of plaintiff.

[fol. 59] "E." Letter from Detroit International Bridge Company to Secretary of State dated May 1st, 1930, suggesting they file an amended report.

"F." Petition of Appeal from the decision of the Secretary of State dated July 1, 1930, filed by plaintiff with the Tax Appeal Board.

"G." Receipt issued for fee of $147.92 received in payment of privilege and filing fee on 1930 report of Detroit International Bridge Company.

III

Now comes the Corporation Tax Appeal Board, defendant and appellee, and in obedience to the appeal allowed

by the Supreme Court (in the nature of a writ of certiorari) sets forth as follows:

That the Detroit International Bridge Company, the petitioner herein, is and has been since June 21, 1927, a corporation for profit organized under the laws of the State of Michigan for a period of thirty years with its principal place of business in Detroit, Michigan.

That on or about September 7, 1929, petitioner tendered to the Secretary of State an annual report, a true copy of which is attached to and made a part of this record and marked defendant's Exhibit "A", accompanied by fees in amount of $12.00 representing the statutory filing fee of $2.00 and $10.00 minimum privilege fee, receipt for which was issued by defendant September 7, 1929, a true copy of which is attached to and made a part of this record and marked defendant's Exhibit "B". Under paragraph seven of said report an exemption was claimed for lands and structures used in construction and forming part of [fol. 60] the bridge under construction between Michigan and Canada in amount of $9,469,729.68. This entire property value was located in Michigan and by its exemption, the minimum privilege fee became payable.

That the Secretary of State acting under the advice of, and supported by an opinion of the Attorney General, a true copy of which is attached hereto and made a part of this return and marked defendant's Exhibit "C", disallowed the claims of plaintiff as hereinbefore recited, and so advised said plaintiff under date of January 30, 1930, copy of which is attached hereto and marked defendant's Exhibit "D".

That on May the first, plaintiff suggested it file an amended report a true copy of said communication is attached hereto and marked defendant's Exhibit "E".

That on May 16, 1930, said amended annual report was filed in the office of Secretary of State, a copy of which forms a part of this record and designated plaintiff's Exhibit "1".

That the Secretary of State disallowed the claims of plaintiff as to allocation of its intangibles outside of Michigan and proceeded to locate such intangibles in Michigan for the purpose of computing the privilege fee. Said plaintiff was advised by defendant under date of June 25, 1930, a true copy of said communication forms a part of

this record and designated plaintiff's Exhibit "2", that the privilege fee as determined by said Secretary of State amounted to $3,000.00.

That on June 27, 1930, Notice of Appeal, which forms a part of this record, marked plaintiff's Exhibit "3", was filed by plaintiff from the decision of the Secretary of State as aforesaid with the Corporation Tax Appeal Board. Said appeal was based upon grounds of location of intangibles all of which is more fully and specifically set forth in plaintiff's petition of appeal, a true copy of which [fol. 61] is attached and marked defendant's Exhibit "F".

That thereafter a hearing was duly had upon said appeal by the Corporation Tax Appeal Board after due notice to the parties who were represented at such hearing by counsel, the said Board did on the 4th day of June, 1931, enter an order in words and figures as follows:

That the Secretary of State was correct in holding that intangible personal property is properly located within Michigan for the purpose of determining the privilege tax and the decision of the Secretary of State is hereby affirmed and that we hereby certify to the Secretary of State the following computation of the privilege fee for the year 1929.

Paid-up capital $1,200,000.00 at 2½ mills—$3,000.00

A true copy of said order forms a part of this record marked plaintiff's Exhibit "4".

That on September 2, 1930, plaintiff filed with the Secretary of State its annual report for the year 1930 pursuant to and in accordance with Act 85, Public Acts of 1921, as amended. A copy of said 1930 report forms a part of this record and designated plaintiff's Exhibit "5".

That said report was accompanied by fees in amount of $147.92; $2.00 of which represented the statutory filing fee and $145.92 as privilege fee. The Secretary of State issued his receipt for the amounts hereinbefore stated, a copy of which is attached hereto and marked defendant's Exhibit "G".

That the determination of the privilege fee by the Secretary of State based on the 1930 annual report was withheld pending the decision of the 1929 issue before the Tax [fol. 62] Appeal Board, and that after the determination of

said Board on the 1929 tax, the Secretary of State determined the 1930 privilege tax of plaintiff to be $2,935.95, a copy of said letter of determination forms a part of this record and designated plaintiff's Exhibit "6".

That on June 8th, 1931, the plaintiff appealed from the decision of Secreary of State as aforesaid to the Corporation Tax Appeal Board upon various grounds, all of which is more fully and specifically set forth in plaintiff's notice of appeal, a true copy of which forms a part of this record and marked plaintiff's Exhibit "7".

That thereafter a hearing was duly had upon said appeal by the Corporation Tax Appeal Board and upon due consideration thereof the said Board did on the 9th day of June, 1931, enter an order confirming the assessment and determination by the Secretary of State, requiring the plaintiff to pay the privilege fee in the sum of $2,935.95 for the year 1930. The certificate of determination of the Corporation Tax Appeal Board forms a part of this record and is designated plaintiff's Exhibit "8".

(Signed) Paul W. Voorheis, Attorney General and Chairman of the Corporation Tax Appeal Board. (Signed) Paul W. Voorheis, Attorney General. (Signed) Paul G. Eger, Assistant Attorney General. (Signed) Alice E. Alexander, of Counsel, State Capitol, Lansing, Michigan.

July 17, 1931.

[fol. 63] UNITED STATES OF AMERICA,
The State of Michigan,
Department of State:

To all to whom these presents shall come:

I, Frank D. Fitzgerald, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that the annexed copy of annual report of the Detroit International Bridge Company for the year 1929; receipt for twelve Dollars dated September 7, 1929, issued by the Secretary of State to the Detroit International Bridge Company; letter dated January 27, 1930, from the Attorney General to the Secretary of State; letter dated January 30, 1930, from the Secretary of State to the Detroit International Bridge Company; letter dated May 1, 1930,

from Stevenson, Butzel, Eaman & Long to the Secretary of State; affidavit of Joseph A. Bower, President of Detroit International Bridge Company, and receipt for one hundred forty-seven and ninety-two hundredths dollars dated September 6, 1930, issued by the Secretary of State to the Detroit International Bridge Company have been compared by me with the record on file in this Department and that the same is a true copy thereof and the whole of such record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this Seventeenth day of July, A. D. 1931.

Frank D. Fitzgerald, Secretary of State. The Great Seal of the State of Michigan. A. D. MDCCCXXXV.

[fol. 64] EXHIBIT "A" TO APPEARANCE AND RETURN

Original 1929 Annual Report of Detroit International Bridge Company

Take notice:

It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.

August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.

(Name of Corporation:) Detroit International Bridge Company.

(Postoffice Address:) Detroit, Michigan.

(Street and No.:) 730 21st Street.

John S. Haggerty, Secretary of State, Lansing, Michigan.

SIR: In accordance with the provisions of Act No. 84, Public Acts of 1921, as amended, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December (Do not change this date) or (Date:) —— (close of fiscal year), or the date of incorporation during this year.

1. The place or places at which the corporation's business has been engaged during the year is Detroit, Mich.

2. Where incorporated: (State:) Michigan. Date of incorporation: June 21, 1927. (Michigan.) Date admitted: ——. (Foreign.)

3. The following are the officers and directors of the corporation:

Names of Officers	Post Office Addresses
J. A. Bower, President	100 Broadway, New York City, N. Y.
J. L. Fozard	730 21st Sta., Detroit, Mich.
J. W. Austin, Vice-President	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender, Secretary	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Secretary	100 Broadway, New York City, N. Y.
[fol. 65]	
Sherman D. Callender, Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Treasurer	100 Broadway, New York City, N. Y.
Harry Robinson, Asst. Treasurer	100 Broadway, New York City, N. Y.

Names of Directors	Post Office Addresses
J. A. Bower	As above.
J. W. Austin	As above.
Sherman D. Callender	As above.
David Graham	As above.
Alfred A. Cook	20 Pine St., New York City, N. Y.
Alfred C. Dent	63 Wall St., New York City, N. Y.
Jansen Noyes	15 Broad Street, New York City, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common				
Preferred	$5,000,000.00	$1,100,000.00		$100.00
Amount				
Common Non-Par.	100,000 shares	100,000 shares	— shares	

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash, including Cash on Special Deposit		$1,069.65	$5,673,155.71
2. Notes and Accounts receivable			
Less reserve for bad debts			7,781.52
3. Deferred payment notes, contracts, etc.			
* Less reserve for deferred profits			
4. Inventories: (To include raw materials, work in process, finished goods, supplies, etc.)			
5. Investments			1,304,630.70
6. Loans			
7. Deferred charges:			
Prepaid insurances, taxes, etc.			
8. Capital assets:			
Land and Bridge Under Construction	$9,469,729.68		
[fol. 66]			
Machinery and Equipment			
Furniture and Fixtures	524.70		
Delivery Equipment			
Automobile	1,434.00		
Total	$9,471,688.38		
Less reserve for depreciation and depletion		9,471,688.38	
9. Patents: (To include copyrights, trade-marks, etc.)			
10. Good-will			

11. Other Assets (describe fully):			
Working Advances	$2,626.45		
** Unamortized Discount and Expense on Funded Debt	1,234,217.19		
		1,500.00	1,235,343.64
12. Total Assets		$9,474,258.03	$8,220,911.57
6. Liabilities:			
13. Notes and Accounts Payable		$1,946,850.86	
14. Accrued expenses (Interest)		557,818.74	
15. Other Liabilities (describe fully)			
First Mortgage Bonds	5,990,500.00		
Debentures	8,000,000.00	13,990,500.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	$1,100,000.00		
Common stock (less stock in treasury)			
Non-par stock (No. of shares.....)	100,000.00	1,200,000.00	
17. Surplus and undivided profits (Enter deficit in red)			
Total Liabilities		$17,695,169.60	

* For record purposes only.

** This is a bookkeeping item and does not represent anasset which should enter into the computation of tax.

7. Property exclusively used in interstate commerce. Lands and structures used in construction and forming part of bridge under construction between Michigan and Canada—$9,469,729.68.

(This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce)

[fol. 67] 8. The amount of capital stock paid in: (a) In cash (See Answer to Question 8 below); (b) in property (See Answer to Question 8 below). (God-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

No par value stock: Book value per share (See Answer to Question 8 below); Price fixed by corporation for sale of (See Answer to Question 8 below).

Answer to Question 8

The original capitalization of the company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently the authorized capital was increased to 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100.00 a share. The additional 99,000 common shares and 11,000 preferred shares were issued as set forth in an affidavit filed with the Secretary of State at the time. A copy of this affidavit is attached hereto and made a part hereof.

State of New York,
County of New York, ss:

Joseph A. Bower, J. L. Fozard, and Frances M. Radford, being duly sworn, on oath depose and say that they are three of the stockholders of Detroit International Bridge Company, a Michigan corporation, and that the following described property, viz:

All of the property and assets of Detroit Bridge Corporation, a Delaware corporation, and substantially all of the [fol. 68] property and assets (except certain contracts) of American Transit Company, a Nevada corporation, including all rights of American Transit Company to construct,

maintain and operate a bridge and approaches thereto across the Detroit River from the City of Detroit, Michigan, to a point near Windsor, Province of Ontario, Dominion of Canada, granted by Act of Congress of the United States of America approved March 4, 1921, as amended by Acts of Congress approved April 7, 1924, March 3, 1925, and May 13, 1926, and all rights of American Transit Company under the permit for the construction and operation of said bridge granted by the Secretary of War of the United States of America under date of May 3, 1927, and by the Chief of Engineers of the United States Army under date of May 4, 1927, and all of the outstanding shares, except directors' qualifying shares, of The Canadian Transit Company, a corporation organized under special act of the Parliament of Canada, and the amendments thereto, to build, maintain and operate a bridge across the Detroit River from at or near Windsor in the Province of Ontario, to Detroit, Michigan, and to unite with any company organized under the laws of the State of Michigan, in financing, controlling, building, working, maintaining and using said bridge, terminals and approaches, and all agreements and contracts for the financing, constructing, maintaining and operating the bridge to be known as the Detroit International Bridge across the Detroit River from Detroit to the town of Sandwich in the Province of Ontario,

has been actually transferred to Detroit International Bridge Company, a Michigan corporation, in consideration [fol. 69] of the payment of not exceeding $900,000.00 in cash and the issuance and delivery of $1,100,000 7% preferred capital stock of said Bridge Company and 99,000 full paid and non-assessable shares without nominal or par value of the common capital stock of said Bridge Company and certain agreements of indemnity executed by said Bridge Company.

The value of the above described property is in excess of said sum of $900,000.00 in cash and of the aggregate par value, to wit $1,100,000, of said preferred stock, but it is impracticable at the present time to determine with any degree of certainty the amount of such excess, so as to fix the value of said property, but when such amount is determined, which it is estimated will be shortly after the formal opening of the Detroit International Bridge for public traf-

fic, an affidavit supplemental hereto, fixing the value of such excess, will be filed.

And further deponents say not.

(Sgd.) Joseph A. Bower, (Sgd.) J. L. Fozard, (Sgd.) Frances M. Radford.

Subscribed and sworn to before me this August 30, 1927. (Sgd.) Frederick G. Brown, Notary Public, Richmond County. Certificate filed in N. Y. Co. No. 1083. N. Y. Co. Register's No. 9779. (Notarial Seal.)

[fol. 70] 9. The nature and kind of the business in which the corporation has been engaged during the year: Construction of a Bridge between Michigan and Canada.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1928, or (Date:) ——, (Close of fiscal year) or the date of incorporation during this year.

Witness our Signatures:

J. A. Bower, President. David Graham, Asst. Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, J. A. Bower, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

J. A. Bower (Official Signature).

Subscribed and sworn to before me this 27th day of August, 1929. Samuel Black, Notary Public. Certificate filed in New York Co. My commission expires March 30, 1930. (Seal.)

Instructions

1. The privilege fee is based upon property value, therefore no deduction should be made from listed assets other than reasonable reserves which are necessary to reduce them to net worth.

[fols. 71 & 72] 2. If this report is at variance with your books in any respect, or if any deviation has been made from book entries, kindly attach a statement of explanation.

3. Do not submit reports as of any other date than Dec. 31, or close of fiscal year.

4. Do not have report signed by others than President or Vice-President, and Secretary or Acting Secretary.

5. Two dollars filing fee must accompany report, together with privilege fee based upon paid-up capital and surplus (2½ mills on the dollar). One check covering fees acceptable.

6. Foreign corporations may compute privilege fee upon that portion of its paid-up capital stock and surplus represented in the ratio the Michigan property bears to the entire property.

7. Do not deduct from paid-up capital in computing privilege fee. (The statute forbids it.)

8. Please see that your report is properly attested.

Tentative computation of privilege fee as made by corporation: $12.00.

(Do not fill in space below.)

Foreign Corporations—Fee as Computed by Secretary of State

Percentage	$....	filing fee.
Paid-up capital	....	on capital stock.
Surplus	....	on surplus.
Total	$....	
Difference	....	due state.
	$....	due corporation.

Filed Sept. 7, 1929, with Secretary of State.
Approved and accepted, 1929.

[fol. 73] EXHIBIT "C" TO APPEARANCE AND RETURN

Opinion by Attorney General

January 27, 1930

Hon. John S. Haggerty, Secretary of State, Lansing, Michigan.

Attention Mrs. Alexander, Corporation Division, re the Detroit International Bridge Company

DEAR SIR: In your letter of the 24th you state that the Detroit International Bridge Company claims that it should pay only the minimum privilege tax because its property is used exclusively in interstate commerce. This corporation is undoubtedly basing its claim upon the language used in Section 5 of Act No. 85, P. A. 1921, which reads in part:

"* * * and none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made, * * *"

The authorities are in accord in holding that a bridge of this character is not being "used in interstate commerce."

4 R. C. L. 560.
12 C. J. 37.

The company should therefore pay its fee in accordance with the proper computation.

Very truly yours, (Signed) Wilber M. Brucker, Attorney General.

[fols. 74-79] EXHIBIT "D" TO APPEARANCE AND RETURN

Letter from Secretary of State to Detroit International Bridge Company

Corporation

January 30th, 1930.

Detroit International Bridge Company, 730 21st Street, Detroit, Michigan.

GENTLEMEN: A recent opinion by the Attorney General advises that your corporation is not entitled to exclude from

the computation of the privilege fee your entire property value upon the theory that it is used in interstate commerce.

Before making final computation of the privilege fee will you kindly advise if the Intangible property belonging to this corporation is not used in connection with Michigan business. Your report indicates all business of the corporation is conducted in Michigan while your financial statement allocates as property outside of Michigan Intangible amounting to $8,220,911.57.

Kindly favor us with a prompt reply.

Respectfully, —— ——, Secretary of State.

AEA:GC.

[fol. 80] [File endorsement omitted]

IN SUPREME COURT OF MICHIGAN

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

Before Butzel, C. J.; Wiest, Clark, McDonald, Potter, Sharpe, North, Fead, JJ.

OPINION—Filed Jan. 4, 1932

SHARPE, J.:

This case involves appeals by the Detroit International Bridge Company, a Michigan corporation, with its principal office in the city of Detroit, from the determination of the Corporation Tax Appeal Board fixing its annual privilege fees for the years 1929 and 1930.

The purposes for which the bridge company was organized are:

"To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto;

"To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The bridge is used for vehicular and pedestrian traffic across the Detroit river from Detroit to Canada. Permission and authority for its construction were granted to the bridge company by Act of Congress and to the Canadian Transit Company, which is now a subsidiary of the bridge [fol. 81] company, by an Act of Parliament of the Dominion of Canada.

The applicable sections of Act No. 85, Pub. Acts 1921, as amended by Act No. 175, Pub. Acts 1929, requiring the payment of an annual privilege fee by corporations, appear in the margin.

1. In 1929 the bridge company reported under the heading, "Cash, Including Cash on Special Deposit, in Michigan, $1,069.65; without Michigan, $5,673,155.71," and in its 1930 report, under a similar heading, cash "In Michigan, $6,271.64," and "Without Michigan, $44,124.15." In the latter report also appeared an item, "Special Deposits, $1,768,920.81."

It is the claim of the company that the amount of the items "Special Deposits" had become localized and had acquired a business situs in the State of New York. The appeal board held otherwise. Included in the item $5,673,155.71 was $52,041.60, money of the company on deposit in a New York bank. It is conceded that this sum should be included in the computation. It appears from the affidavit of the president of the company, annexed to the 1929 report, that the balance of this item was held by the New York Trust Company as trustee under a Joint First Mortgage of the bridge company and the Canadian Transit Company, securing bonds of these companies in the sum of $12,000,000, and also as trustee under a Trust Agreement of the bridge company, securing debentures of that company in the amount of $8,000,000; that these bonds and debentures were issued to bankers for cash in August, 1927; that the proceeds thereof came into the hands [fol. 82] of the trustee and the sum then in its hands was the balance thereof after such payments as had been made by it on the construction cost of the bridge; that a part of it had been loaned on call to individuals and corporations located and doing business in New York, and that the trustee was authorized so to do by the provisions in the mortgage and trust agreement; that the bridge company was entitled to it only as needed to pay the cost of construction of the bridge,

and that a substantial part of it was to be used during the period of construction in payment of interest due upon the mortgage bonds and debentures.

The item of "Special Deposits" in the 1930 report is explained in a similar manner, the amount in the hands of the trustee having been reduced to that amount.

The fee here sought to be collected is imposed upon the "paid-up capital and surplus" of the corporation "for the privilege of exercising its franchise and of transacting its business within this state," and the computation thereof in the ratio prescribed "shall be made upon the corporation's property, both tangible and intangible, owned or used in Michigan," and as provided in the amendment (Act No. 175, Pub. Acts 1929):

"In determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the domicile of the corporation."

It seems clear that the moneys in the hands of the trustee in New York is the property of the corporation, and was properly included in the computation.

[fol. 83] The contention of counsel for the bridge company that this money "had become localized and had acquired a business situs in the State of New York," if a subject for consideration in the construction to be placed upon our statute, is answered by the holding of the court in that State that the "activities" of the trustee in a similar case "are merely incidental to the corporate organization and the ownership of corporate assets and are not exercised for the purpose of continued efforts in the pursuit of profit and gain which is the test of the 'doing of business.'" People ex rel. etc. v. Knapp, 229 N. Y. 502 (syllabus).

The bonds and debentures were issued by the bridge company to secure the money with which to erect the bridge. These instruments do not appear in the record, although counsel on both sides quote from them. It will be assumed that under their provisions it was, and is, the

duty of the trustee to protect the purchasers by seeing to it that the money is expended for the purpose for which the securities were issued. But, until so expended, it belongs to the bridge company, although not subject to withdrawal from the hands of the trustee until the conditions of the trust agreement have been complied with. The purpose of its retention by the trustee was not for reinvestment. Neither could it be appropriated or set aside by the trustee for the payment of interest on the bonds or securities until such interest became due.

2. Under the heading "Investments," the 1929 report showed $1,304,630.70, and that for 1930 $2,471,610.63. These items included stock in the Canadian Transit Com-
[fol. 84] pany of the value of $1,280,000. Over objection these sums were included in the computation by the appeal board. This company was organized under the laws of the Dominion of Canada. While the title to that part of the bridge situated in Canada is held by it, all of the shares of its stock are held and owned by the Detroit International Bridge Company. It is but a subsidiary thereof. Its affairs must be conducted as a separate entity, in order that the governmental rights of that country may be protected. Its stock is on deposit by the bridge company with the trustee in New York as collateral to the bonds and debentures issued. This stock is an asset in the hands of the bridge company, and was properly included in the computation.

3. Items "Unamortized Discount and Expense on Funded Debt" of $1,234,217.19 in the 1929 report and $1,153,458.98 in that of 1930 were included in the computations by the appeal board. These items are thus explained by the president in his affidavit above referred to: When the bonds and debentures of the bridge company were sold in 1927, the face value of them was not received by the company. They were sold at a discount, and there were certain expenses connected with the sale. This discount and expense are represented by these items, and are treated upon its balance sheet as an asset to be reduced each year until the securities mature. He states:

"The theory upon which accountants proceed in sanctioning this practice is that since the item is a payment for

the use of money over a long period it is fair that the burden of the payment should be spread over the entire period and not charged entirely to the year in which it was made."

[fol. 85] These are but bookkeeping items. They do not in fact represent an asset or property of the company. Without passing upon the propriety of making such entries on its balance sheets and inserting them in its reports to the secretary of state, we are satisfied that they should not have been included in the computation of the tax.

4. It is insisted that the bridge company is not subject to the payment of any annual privilege tax; that it is limited by its charter and dedication to public use, and is engaged exclusively in foreign commerce, and that the imposition of such a tax upon it violates article 1, section 8, clause 3 of the Federal Constitution, which empowers the congress of the United States "To regulate Commerce with foreign Nations * * *."

We are impressed that in the discussion of this matter counsel lose sight of the nature of the privilege fee sought to be collected. It is not a tax upon the proceeds of the business of the corporation. It in no way involves the tolls collected from those using the bridge as a means of transportation between Detroit and Canada. It is a fee imposed by law "for the privilege of exercising its franchise and of transacting its business within this state." The distinction between such a fee and a tax upon property was clearly pointed out in Union Steam Pump Sales Co. v. State, 216 Mich. 261, and later in Re Truscon Steel Co., 246 Mich. 174, and in Re G. H. Hammond Co., 246 Mich. 179. The question presented is so clearly disposed of in Re Detroit & Windsor Ferry Co., 232 Mich. 574, that further discussion seems unnecessary.

[fol. 86] The cases relied on by counsel for the bridge company are, we think, easily distinguished. In Philadelphia and Southern Steamship Co. v. Pennsylvania, 122 U. S. 326, the tax was levied upon the gross receipts of a steamship company; in Covington etc., Bridge Co. v. Kentucky, 154 U. S. 204, the State sought to regulate the rates of fare for passage over a bridge spanning the Ohio river; in Sault Ste. Marie v. Int'l Transit Co., 234 U. S. 333, the city sought to enforce the collection of a license fee, and in Ozark Pipe

Line Corp. v. Monier, 266 U. S. 555 and in State Tax Commission v. Interstate Natural Gas Company, Inc., — U. S. — (decided November 23, 1931), the State sought to enforce a statute providing for the collection of such a tax on corporations not organized under its laws and exclusively engaged in interstate commerce.

Unless counsel can agree upon the deductions which shall be made in conformity herewith, the orders will be set aside and remand had to the board to determine the proper amount of the tax to be paid.

(Signed) Nelson Sharpe, John S. McDonald, Geo. M. Clark, William W. Potter, Walter H. North, Howard Wiest, Henry M. Butzel, Louis H. Fead.

[File endorsement omitted.]

[fol. 87] 2 Comp. Laws, 1929

"10140. Annual Privilege Fee; Profit Corporation.—Sec. 4. Every corporation organized or doing business under the laws of this state, excepting railroad companies and interurban railroad companies, and telephone and telegraph companies, express companies and foreign insurance companies shall, at the time of filing its annual report with the secretary of state of this state, as required by section five of chapter two of part five of act number eighty-four of the public acts of nineteen hundred twenty-one, for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporation franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

"10143. Franchise and Privilege Fees; Method of Computation; Surplus Defined; Furnishing of Information.—Sec. 5. In the case of computing the franchise and privilege fees prescribed by sections three and four of this act, respectively, both as to domestic and foreign corporations,

such computation shall be made upon the corporation's property, both tangible and intangible, owned or used in Michigan in the ratio that such property bears to the entire property of the corporation, and such ratio shall be applied by the secretary of state to determine the amount of the authorized capital stock owned or used in Michigan, and to determine what portion of the corporations's paid-up capital and surplus, severally, are owned or used in Michigan. The term 'surplus' as used in this act, shall be taken and deemed to mean the net value of the corporation's property, less its outstanding indebtedness and paid-up capital; but in no case, either as domestic or as to foreign corporations, shall any deduction be made from the item of paid-up capital, in computing the privilege fee thereon, by reason of any impairment of the same. None of the property or capital of any corporation subject to paying the privilege fee prescribed in section four which is located without the state of Michigan, and none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made: Provided, That in determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the [fols. 88-95] domicile of the corporation. The secretary of state shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the privilege fee to be paid by such corporation. For the purpose of this act only, each share of no par value shall be deemed to have the value of at least one dollar, or such value as shall have been fixed by the corporation for the sale of such stock, or the book value as determined by the secretary of state, whichever may be the higher. In any case where the capital of a corporation is not divided into shares, the whole property thereof shall be deemed to be the authorized capital stock for the purpose of this act."

[fol. 96] IN SUPREME COURT OF MICHIGAN

35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

JUDGMENT—April 5, 1932

The record and proceedings in this cause having been removed to this Court by appeal allowed by this Court issued to the Corporation Tax Appeal Board for the State of Michigan and the matters in error assigned in said petition for appeal (in the nature of a petition for a writ of certiorari) having been seen and inspected and duly considered by the Court and it appearing to this Court that in said record and proceedings that the imposition of said privilege fee for the year of 1930 under Act No. 85 of the Public Acts of 1921 as amended by Act No. 175 of the Public Acts of 1929 insofar as applied to the plaintiff does not violate Article 1 Section 8 Clause 3 of the Constitution of the United States and it further appearing to the Court that the determination of the Corporation Tax Appeal Board of the privilege fees for the year 1929 and 1930 was without error except as to the inclusion of the item of "unamortized discount and expense on funded debt";

Therefore, it is ordered and adjudged that the determination of the Corporation Tax Appeal Board for the State of Michigan be and the same is hereby affirmed in all particulars except as to the inclusion of the item of "unamortized discount and expense on funded debt", the determination of the Corporation Tax Appeal Board on that question being reversed, the amount of the privilege fees to be paid for the years 1929 and 1930 by Detroit International Bridge Company, the plaintiff, to be in accordance with the provisions of this judgment.

[fol. 97] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 5, 1932

To the Honorable George M. Clark, Chief Justice of the Supreme Court for the State of Michigan:

Now comes Detroit International Bridge Company, plaintiff and appellant, and represents:

I

That on the 4th day of March, A. D. 1932, final judgment was duly entered in the above entitled cause by the Supreme Court for the State of Michigan, the highest court of the State of Michigan, affirming in all particulars but one a determination made by the Corporation Tax Appeal Board of the State of Michigan.

II

This action before the Supreme Court of the State of Michigan is in the nature of a certiorari proceedings to review the determination of the Corporation Tax Appeal Board of the State of Michigan, to which Board the plaintiff and appellant appealed from the computation of the Secretary of State for the State of Michigan of the annual [fol. 98] privilege fees for the years 1929 and 1930.

III

That the Detroit International Bridge Company, plaintiff and appellant, is a corporation organized under the laws of the State of Michigan, with its principal office at Detroit, Wayne County, Michigan. Article III of the Articles of Association of the Detroit International Bridge Company provides:

"The purpose or purposes of this corporation are as follows:

To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sand-

wich, Province of Ontario, Canada, and the approaches thereto;

To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The Detroit International Bridge, petitioner and appellant, has continuously since October, 1929, itself operated said bridge for vehicular and pedestrian traffic across the Detroit River from Detroit, Michigan to Canada, and has engaged exclusively in such business.

IV

In said cause there is drawn in question the validity of a statute of the State of Michigan, on the ground of its being repugnant to the Constitution, laws or treaties of the United States, and the decision is in favor of its validity. Petitioner and appellant contended that the corporation was not subject to the payment of the annual privilege fee under Act No. 85 of the Public Acts of 1921, [fol. 99] as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan because it was limited by the powers granted under its corporate charter to the carrying on of this business of foreign commerce and because it was engaged exclusively in foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, section 8, clause 3, of the Constitution of the United States. Plaintiff and appellant, Detroit International Bridge Company, claimed and contended that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan, so far as applied to it, is unconstitutional in that it is an improper interference with and regulation of foreign commerce by the State of Michigan, and thereby violates the power of Congress, to regulate foreign commerce as provided in Article I, Section 8, Clause 3, of the Constitution of the United States.

V

Plaintiff's and appellant's claims and contentions, that said act contravenes Article I, Section 8, Clause 3, of the

Constitution of the United States in the respects and particulars aforesaid, were overruled by the Supreme Court of the State of Michigan, assignment of errors on this point having been raised in the appeal to the Supreme Court for the State of Michigan; that said question was brought and raised before the Supreme Court of the State of Michigan in the manner and form required under the practice of the said court, and which satisfied all of the requirements, and [fol. 100] the said questions were considered at length by the said Supreme Court for the State of Michigan; and that said contentions and objections of plaintiff and appellant were expressly overruled by the judgment in the opinion rendered in said Supreme Court.

VI

Your petitioner further avers that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioner, all of which more fully appear from the assignment of errors which is filed herewith.

Wherefore petitioner prays for the allowance of an appeal from the Supreme Court for the State of Michigan, the highest court of said State, to the Supreme Court of the United States in order that the decision of the Supreme Court for the State of Michigan may be examined and reversed. It also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court for the State of Michigan, may be sent to the Supreme Court of the United States as provided by law.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

Dated April 5th, 1932.

Alfred A. Cook, Alfred A. Cook, Thomas G. Long, Thomas G. Long, Victor W. Klein, Victor W. Klein, Attorneys for Petitioner and Appellant, Detroit International Bridge Company.

This is to acknowledge service of the foregoing petition.
Paul W. Voorhies, Atty. Gen., by Alice E. Alexander.

[fol. 100½] [File endorsement omitted.]

[fol. 101] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

ORDER ALLOWING APPEAL—Filed April 5, 1932

The petition of Detroit International Bridge Company for an appeal in the above cause to the Supreme Court of the United States from the supreme court of the State of Michigan, and the assignment of errors filed therewith and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the supreme court of the State of Michigan, as prayed in said petition, and that the clerk of the supreme court of the State of Michigan shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within thirty days from the date hereof.

It is further ordered that said Detroit International Bridge Company shall give good and sufficient security in the sum of Five Hundred Dollars ($500) that said appellant shall prosecute said appeal to effect, and if said appellant fails to make its plea good, it shall answer all costs.

Geo. M. Clark, Chief Justice of the Supreme Court of Michigan.

April 4, 1932.

This is to acknowledge service of the foregoing order.
Paul W. Voorhies, Attorney General, by Alice E. Alexander.

[fols. 101½-102½] [File endorsement omitted.]

[fols. 103-108½] Bond on appeal for $500.00 omitted in printing.

[fol. 109] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

ASSIGNMENT OF ERRORS—Filed April 5, 1932

Now comes Detroit International Bridge Company, petitioner and plaintiff, in error by Alfred A. Cook, Thomas G. Long and Victor W. Klein, its attorneys, and assigns the following errors in the record and proceedings in the said cause, to wit:

I

The Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929 of the State of Michigan (Sections 10140, 10143, 10144, and 10145 of the Compiled Laws of Michigan, 1929, inclusive) is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1930 upon plaintiff, the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.

[fol. 110] II

The tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No.

175 of the Public Acts of 1925), but being imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign commerce, viz., an international highway toll bridge such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3 of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act not applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

By reason whereof this petitioner and plaintiff in error prays that the final decision and judgment in the Supreme Court of the State of Michigan dated March 4th, 1932 in the above entitled cause be reversed insofar as the 1930 privilege tax be affected thereby, and other appropriate action [fol. 111] be had in relation thereto.

Alfred A. Cook, Alfred A. Cook, Thomas G. Long, Thomas G. Long, Victor W. Klein, Victor W. Klein, Attorneys for Petitioner and Appellant, Detroit International Bridge Company.

Dated April 5th, 1932.

This is to acknowledge service of the foregoing assignments of error.

Paul W. Voorhies, Attorney General, by Alice E. Alexander.

[fol. 111½] [File endorsement omitted.]

[fol. 112] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Exiting under the Laws of the State of Michigan

Appeal of the Detroit International Bridge Company from the Determination of the Corporation Tax Appeal Board

STIPULATION DESIGNATING TRANSCRIPT TO BE FORWARD- BY CLERK TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed May 6, 1932

It is hereby stipulated by and between the parties through their respective counsel that the following portion of the record in the above entitled cause be forwarded for filing with the Clerk of the Supreme Court of the United States at Washington, D. C.:

1. The entire record before the Supreme Court of Michigan in the appeal from the Corporation Tax Appeal Board to the Supreme Court of Michigan.
2. The petition for leave to appeal to the United States of America, Supreme Court.
3. Assignments of Error.
4. Order allowing appeal to the United States Supreme Court.
5. Cost bond.
6. Stipulation designating record to be filed with the United States Supreme Court.

Alfred A. Cook, Thomas G. Long, Victor W. Klein, Attorneys for Detroit International Bridge Company, Plaintiff in Error. Paul W. Voorhies, Attorney General, Attorney for Corporation Tax Appeal Board.

Dated April 28th, 1932.

Clerk's certificate to foregoing paper omitted in printing.

[fols. 112½ & 113] [File endorsement omitted.]

[fol. 114] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS INTENDED TO BE RELIED UPON BY APPELLANT AND PARTS OF RECORD TO BE PRINTED PURSUANT TO RULE 13, SECTION 9, UNITED STATES SUPREME COURT RULES, TOGETHER WITH PROOF OF SERVICE OF SAME—Filed May 6, 1932

Detroit International Bridge Company, a Michigan corporation, appellant, in pursuance to Rule 13, Section 9, Supreme Court Rules, does hereby state that in the appeal it intends to rely upon the following points of law set forth in its two Assignments of Error, to wit:

I

That the Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929 of the State of Michigan (Sections 10140, 10143, 10144 and 10145 of the Compiled Laws of Michigan, 1929, inclusive), is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1930 upon plaintiff, the State of Michigan did not unduly interfere with and hereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.

[fol. 115] II

That the tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No. 175 of the Public Acts of 1925), but being imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign

commerce, viz, an international highway toll bridge such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3 of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act no- applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

Appellant further states that it intends to rely upon the following portions of the record, which it thinks necessary for consideration in the determination of this case on appeal:

1. The entire record before the Supreme Court of the State of Michigan in the appeal from the Corporation Tax Appeal Board to the Supreme Court of Michigan, excepting appellant's exhibits 1, 2, 3 and 4, and excepting appellee's exhibits A, B, E, F and G.

2. The petition of the Detroit International Bridge Company filed with the Supreme Court of Michigan for leave to appeal to the United States Supreme Court.

3. Assignments of error.

4. Order allowing appeal to the United States Supreme Court.

5. Cost bond.

6. Stipulation filed with the Supreme Court of Michigan designating transcript to be forwarded by clerk to the clerk of the Supreme Court of the United States.

[fols. 116 & 116a] 7. This statement of points intended to be relied upon and designation of the parts of the record to be printed.

Alfred A. Cook, Thomas G. Long, Victor W. Klein,
Attorneys for Detroit International Bridge Company, Appellant.

Proof of Service Upon Appellee

STATE OF MICHIGAN,
County of Wayne, ss:

Victor W. Klein, being first duly sworn, deposes and says that he did on the 4th day of May, A. D. 1932, serve a true

copy of the foregoing Designation of points intended to be relied upon by appellant and parts of record to be printed pursuant to Rule 13, Section 9, United States Supreme Court Rules, together with Proof of Service of same upon the Corporation Tax Appeal Board by enclosing same in an envelope addressed Paul W. Voorhies, Attorney General, Lansing, Michigan, a member of said Corporation Tax Appeal Board, registered mail, return receipt requested, and depositing same in the Post-Office of the City of Detroit, Wayne County, Michigan, postage prepaid.

Further deponent saith not.

Victor W. Klein.

Subscribed and sworn to before me this 4th day of May, A. D. 1932. Veronica B. Walker, Notary Public, Wayne County, Michigan. My commission expires Dec. 13, 1932.

[fol. 116b] [File endorsement omitted.]

[fols. 117 & 118] In Supreme Court of the United States

Designation of Additional Parts of Record to be Printed —Filed May 19, 1932

Comes now the Corporation Tax Appeal Board, appellee in the above entitled cause, and designates the following additional parts of the record which it believes is material on the hearing of said case, and respectfully requests that the same be printed by the clerk for the hearing.

Title of paper	Record page
Appellee's "Exhibit A". Original 1929 annual report	64–71
Appellant's "Exhibit 1". Amended 1929 annual report	23–32

Paul W. Voorhies, Attorney General of the State of Michigan, Counsel for Appellee.

Dated Lansing, Michigan, May 12, 1932.

[fol. 119] [File endorsement omitted.]

Endorsed on cover: File No. 36,722. Michigan Supreme Court. Term No. 51. Detroit International Bridge Company, appellant, vs. Corporation Tax Appeal Board of the State of Michigan. Filed May 2, 1932. File No. 36,722.

(2208)